

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**OPTUMRX, INC. AND EXPRESS SCRIPTS, INC.'S MOTION
FOR THE COURT TO HOLD THE DECEMBER 1, 2023 TELECONFERENCE
ON THE RECORD WITH A COURT REPORTER**

In accordance with MDL Order 2804-69 (Special Master Appointment Order), Federal Rules of Civil Procedure 53 and 79, and 28 U.S.C. § 753, OptumRx and Express Scripts move the Court to hold the upcoming December 1, 2023 teleconference (8:30 a.m. ET) on the record before a court reporter.

DISCUSSION

“All proceedings . . . had in open court” must be recorded “unless the parties with the approval of the judge shall agree specifically to the contrary.” 28 U.S.C. § 753(b)(2). And “such other proceedings . . . as may be requested by any party to the proceeding” must be recorded. 28 U.S.C. § 753(b)(3); *see also United States v. Robinson*, 459 F.2d 1164, 1170 (D.C. Cir. 1972) (per curiam) (proceedings covered by the Act include “bench conferences” and “arguments of counsel”). Section 753(b)’s requirements are “mandatory,” and courts have a “duty” to meet them. *United States v. Gallo*, 763 F.2d 1504, 1530 (6th Cir. 1985). *Pittsburgh v. Simmons*, 729 F.2d 953, 955 (3d Cir. 1984) (“when counsel desires to go on the record, we can find no reason for a judge to decline to do so”).

The December 1 teleconference with the Court will likely cover issues for which OptumRx and Express Scripts want to create a record, including various issues related to the competing

proposed case management orders. *See* ECF Nos. 5246-1, 5246-2. Accordingly, OptumRx and Express Scripts move this Court to hold the December 1 teleconference (8:30 a.m. ET) on the record before a court reporter.

November 30, 2023.

Respectfully submitted,

/s/ Brian D. Boone

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CERTIFICATE OF SERVICE

I certify that that on November 30, 2023, a copy of the foregoing was served on all counsel of record by filing the same with the Court's ECF system.

/s/ Brian D. Boone

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